

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

v.

GERARLD MAGNANT

Defendant/Appellant.

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Supreme Court No. 159371

Court of Appeals No. 341627

Ingham County Circuit Court  
No. 17-407-FH

**DEFENDANT/APPELLANT GERALD MAGNANT REPLY BRIEF IN SUPPORT OF  
HIS APPLICATION FOR LEAVE TO APPEAL**

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Dated: July 1, 2019

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## I. ARGUMENT

### A. The Court of Appeals Erred in Affirming Magnant’s Bind-Over for Trial on the Charge of Transporting Cigarettes Without a Transporter License Contrary to MCL § 205.428(3) and, thus, in Affirming the Denial of Defendants’ Joint Motion to Quash the Information.

#### 1. The Court of Appeals Erred in its Construction of MCL § 205.428(3) by Incorrectly Applying Only a Lesser *Mens Rea* Element

Appellee argues that, although *People v. Shouman*, 2016 Mich. App. Lexis 1812 (Oct. 4, 2016), is unpublished and not binding, it is persuasive in construing MCL § 205.428(3) (“Subsection (3)”) to not require knowledge of one’s status, *i.e.*, that one was transporting cigarettes “contrary to this act.” (*See Answer at 21-27.*) This disregards the binding precedent of *People v. Nasir*, 255 Mich. App. 38 (2003), which interprets a similar subsection of the TPTA—MCL § 205.428(6) (“Subsection (6)”). Both Subsections proscribe certain conduct relating to *both counterfeit and non-counterfeit* items. In reversing the conviction, the *Nasir* Court held that Subsection (6) requires “knowledge that the stamp, writing, or device was not an authentic tax stamp.” *Id.* at 46. It applied a multi-factor balancing test—as adopted by this Court in *People v. Quinn*, 440 Mich. 178 (1992)—and found that, while Subsection (6) does not expressly include a fault element, the Legislature, nevertheless, “intended to require some fault as a predicate to finding guilt.” *Id.* at 41-44.

Appellee argues in error that *Nasir* simply requires “knowledge of what one possesses and transports, not the legal ramifications of such possession or transportation.” (*Answer at 24-25.*) But, *Nasir* specifically requires *knowledge of the counterfeit or illegal nature* of the possession or use. Knowledge that something is counterfeit, by its very nature, implies some knowledge of fault and the legal risk of possessing or using the counterfeit material. Here, possessing or transporting cigarettes is not, in itself, illegal; thus, knowledge of merely possessing or transporting cigarettes is not the same as knowledge of doing so under circumstances that render it unlawful or “contrary

to this act.” The *mens rea* element adopted below carries no level of “fault” or “culpability” at all and completely disregards the statutory language of “contrary to this act”—the status element that makes criminal the otherwise innocent conduct of possessing or transporting cigarettes.

Appellee further claims that placing the “knowledge requirement [only] in the possession element” is consistent with other criminal laws, but then ignores the essential elements of the offenses used for comparison.<sup>1</sup> For example, one of the elements of unlawful possession of a controlled substance is “that the defendant knew that he/she possessed a controlled substance.” Mich Crim JI 12.5(3). The elements of possession of a fraudulent or altered financial transaction device include “that the defendant possessed a device which was either fraudulently issued or altered in some way so that it was different than when it was originally issued” and did so “knowingly.” Mich Crim JI 30.4. Thus, both offenses require proof of more than mere possession of something that turned out to be a controlled substance or an altered financial transaction device; they require proof that the defendant knew of the illegal or proscribed nature of the item possessed. Similarly, *Nasir* held that a Subsection 6 violation requires “knowledge that the stamp, writing, or device was not an authentic tax stamp.” 255 Mich. App. at 46. The common thread in all of these offenses is that a conviction requires knowledge of the facts that render possession or use of the item illegal—that the substance was a controlled substance; that the device was fraudulently issued or altered; that the stamp was not authentic. Here, the same knowledge requirement applies: the defendant must have knowledge of the facts that make his possession or transportation of cigarettes unlawful, *i.e.*, that he was required to obtain a license to transport them but did not do so.

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<sup>1</sup>In addition, such criminal laws are more akin to public welfare laws rather than to revenue laws, like the TPTA, and the illegal nature of the items underlying the offenses is more readily apparent such that knowledge of their mere possession, in itself, carries a fault or culpability element while knowledge of the mere possession of cigarettes does not.

The *Nasir/Quinn* factors compel a finding that the Legislature intended to require “fault” under Subsection (3) and, in particular, an intent element requiring knowledge of both transporting cigarettes and doing so “contrary to this act.” (See Application at 15-21.) Appellee argues that, without an intent element, the offense in *Nasir* would be “more likely to target ‘a broad range of apparently innocent conduct’” than Magnant’ charged offense. (Answer at 25.) This totally ignores that there is nothing inherently illegal in possessing or transporting cigarettes. The TPTA itself implicitly recognizes this by exempting interstate commerce carriers from the licensing requirement, even when transporting cigarettes in Michigan. See MCL § 205.422(y). Thus, the criminality of transporting cigarettes in Michigan without a transporter license does not turn on the inherent nature of the underlying conduct.

Appellee minimizes Magnant’ plight, arguing that, unlike Subsection (6) which carries a mandatory prison term of “not less than 1 year,” Subsection (3) does “not require any incarceration,” is “on the G grid of the sentencing guidelines,” and *only* carries the possibility of up to 5 years’ imprisonment. (Answer at 23, 25.) However, the seriousness of the charged offense cannot be downplayed so cavalierly. Regardless of the advisory sentencing guidelines, the offense carries up to 5 years’ incarceration and/or a maximum fine of \$50,000. It is a *felony*, which is “‘as bad a word as you can give to a man or thing,’” and triggers a multitude of devastating, life-long collateral consequences. See *e.g.*, *Nasir*, 255 Mich. App. at 43-44 (quoting *Staples v. U.S.*, 511 U.S. 600, 618 (1994)); “Collateral Consequences,” Caprice R. Johnson, NACDL, The Champion (Nov. 2016); and *U.S. v. Nesbeth*, 188 F. Supp. 3d 179 (E.D.N.Y. 2016).

Appellee frets that adopting Magnant’ position “would in effect give every tobacco smuggler one ‘get out of jail free’ card,” speculating that the State “could seldom show beyond a reasonable doubt a person’s knowledge of the law before that person got caught the first time.” (Answer at 25.) Magnant’ position, however, would simply limit the State to prosecuting and

jailing only those who knew that they were legally required to have a transporter license but did not obtain one (*i.e.*, those with a truly culpable state of mind). This would not offend but, rather, would promote notions of justice and fair play and would limit prosecution to actual smugglers. In *Shouman*, the case upon which Appellee relies so heavily, the defendant previously had his own tobacco business and his license had been revoked; thus, he was clearly on notice of the TPTA's licensing requirements. *See* 2016 Mich. App. Lexis 1812, at \*17 n.3 (also noting that his claim that he was now employed by another business was in dispute). There are a myriad of ways for the State to prove a case. The "parade of horrors" conjured up by Appellee should not negate the bedrock principle of criminal law that requires proof of a defendant's actual "culpability."

Importantly, the Legislature's 2008 amendments to MCL § 205.428 and the history surrounding them make clear that the Legislature intended a specific *mens rea* element (*i.e.*, "knowingly" possesses or transports "contrary to this act" X amount of cigarettes) even for a *misdemeanor*. (*See* Application at 19-20.) Appellee and the lower courts agree that a "knowingly" requirement exists in Subsection (3) —but limiting it to only the conduct element of possessing or transporting cigarettes is unsupported. The very recent U.S. Supreme Court case of *Rehaif v. U.S.*, 2019 U.S. LEXIS 4199 (June 21, 2019) (attached as Ex. A), is highly instructive on many fronts. There, the Supreme Court addressed the *mens rea* required in a prosecution under 18 U.S.C. § 924(a)(2), for anyone who "knowingly violates" 18 U.S.C. § 922(g), which makes it unlawful for any person falling into any of nine enumerated status categories to "possess . . . any firearm or ammunition." *Id.* at \*4-5, 8. The offense in *Rehaif* contains similar elements to those here: 1) a status element (*i.e.*, being an alien illegally or unlawfully in the United States or, as here, acting "contrary to this act" or as a transporter without the requisite license); 2) a possession element; 3) a jurisdictional element; and 4) a firearm element (*i.e.*, a "firearm or ammunition" or, as here,

cigarettes). *Id.* at \*8-9. In addressing the required intent for that offense, the Court rejected the government’s position that the word “knowingly” applied only to the defendant’s conduct and not also to his status, and explicitly held that the government must show both “that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” *Id.* at \*5-17 (also rejecting the other arguments raised by Appellee here, including the application of the maxim “ignorance of the law is no excuse,” and that proving a defendant’s knowledge of his status would be unduly burdensome).

The *Rehaif* Court aptly reasoned that, “[a]s ‘a matter of ordinary English grammar,’ we normally read the statutory term ‘knowingly’ as applying to all the subsequently listed elements of the crime.” *Id.* at \*9. Further, as the Court underscored, since “everyone agrees that the word ‘knowingly’ applies to . . . [Section] 922(g)’s possession element, which is situated after the status element,” there “is no basis to interpret ‘knowingly’ as applying to the second . . . element but not the first.” *Id.* at \*9-10. Similarly, as to the charged offense here, everyone agrees that the word “knowingly” applies to the possession or transportation of cigarettes, and there is no basis to interpret ‘knowingly’ as applying to these elements but not to the intervening “contrary to this act” element (which modifies possession or transportation).

The *Rehaif* Court further reasoned that, “[b]eyond the text,” its reading of Sections 924(a)(2) and 922(g) “is consistent with a basic principle that underlies the criminal law, namely, the importance of showing . . . ‘a vicious will.’” *Id.* at \*10. Specifically, the Court found that “[a]pplying the word ‘knowingly’ to the defendant’s status . . . helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts.” *Id.* at \*11. As the Court explained, since “the possession of a gun can be entirely innocent, . . . it is therefore the defendant’s *status*, and not his conduct alone, that makes the difference”; “[w]ithout knowledge of that status, the



defendant may well lack the intent needed to make his behavior wrongful.” *Id.* Likewise, here the defendant’s status (*i.e.*, acting “contrary to this act” or as a “transporter” without the requisite license) is also the “‘crucial element’ separating innocent from wrongful conduct” as there is nothing inherently wrongful about possessing or transporting cigarettes. *See id.* at \*13. Applying “knowingly” to the defendant’s status here also helps to “‘separate those who understand the wrongful nature of their act from those who do not.’” *See id.* at \*11.

It is evident from the statutory text, pertinent legislative amendments and history, and application of the *Nasir/Quinn* factors that the Michigan Legislature did not intend to impose criminal liability on persons who, due to lack of knowledge, do not have a wrongful mental state. Thus, following the U.S. Supreme Court’s sound reasoning, a defendant charged with a Subsection 3 violation must have knowledge both of his conduct (*i.e.*, that he was transporting cigarettes) and of his status (*i.e.*, that he was doing so “contrary to this act” or that he was required to obtain a transporter license but did not do so).

**B. The Court of Appeals Erred in Construing the TPTA’s “Transporter” Licensing Requirement to Apply to Individuals like Magnant and in Finding the Requisite Fair Notice of Such Application and, thus, Erred in Affirming the Denial of Defendants’ Joint Motion to Dismiss for Due Process Violation**

Appellee discusses, at length, the “basic structure” of the TPTA; how it “‘is a revenue statute designed to assure that tobacco taxes levied in support of Michigan schools are not evaded’”; and how neither the KBIC nor Magnant, as a tribal member, are “exempt,” as such, from *otherwise-applicable* State law for activities “outside of Indian country,” absent express Federal law to the contrary. (Answer at 8-9, 19.) From this, Appellee leaps to the conclusion that, “[t]herefore, KBIC or its employees need a license under the TPTA to transport or import tobacco products into and through the State of Michigan.” (*Id.* at 10, 19.) But the TPTA’s licensing provisions, by their plain terms, are not “otherwise applicable State law”—they do not apply to

Indian tribes in the first instance. The TPTA's licensing provisions expressly apply to a "person" who is involved in the tobacco business. *See e.g.*, MCL § 205.423(1); MCL § 205.428(3). However, an Indian tribe such as the KBIC is not "an individual, partnership, fiduciary, association, limited liability company, corporation or other legal entity" and, thus, is not a "person" as defined in the statute. *See* MCL § 205.422(o). Rather, as a sovereign nation, an Indian tribe is qualitatively different from the above-referenced nouns, and there is nothing in the statute that otherwise suggests that it applies to a sovereign governmental entity like the KBIC. *See also Oakland County Bd. of County Rd. Comm'rs v. Mich. Prop. & Cas. Guar. Ass'n*, 456 Mich. 590 (1998) (determining whether the State of Michigan constitutes a "person" and, in particular, a "legal entity" within the meaning of the Property and Casualty Guaranty Association Act, MCL § 500.7901, *et. seq.*, and finding that, in that case, it does because the Act confers a benefit rather than imposing liability or a burden on the sovereign). Applying the TPTA's licensing provisions to Indian tribes would also violate well-established Federal-Law immunities and, as the Court of Appeals' dissent recognized, there is pending federal litigation between the State of Michigan and the KBIC on this very issue. (Appendix B, Dissent at 3 n.2, 5.)

Appellee argues that *selected* provisions of the TPTA make the transporter license requirement "clear to persons of ordinary intelligence." (*See* Answer at 14-15, 18.) But, this ignores the other provisions of the TPTA, Michigan Treasury Form 336 (which is required by and implements the TPTA), and the Preliminary Examination testimony of Treasury Officials that make clear that this requirement applies only to businesses, not to employees of such businesses. Specifically, a "transporter" is a "person" who engages in transportation, and, while a "person" is defined to include an "individual" in addition to business entities like a corporation and a partnership, the term "individual," when read in context with the rest of the statute (as well as

Form 336), is clearly meant to apply only to an individual operating a business on his own account. (See Application at 10-11, 34-43). When read as a whole, the TPTA's transporter licensing provisions do not give the requisite fair notice to employees that, when transporting tobacco products as part of their employment, they must individually petition the State for and obtain a transporter license; rather, such provisions actually dictate that such employees would not qualify for such a license. Indeed, assuming *arguendo* that Magnant was individually required to obtain a transporter license, if he had attempted to obtain such a license, he would not even have been able to, especially given Treasury's approved application form, Form 336, pertaining exclusively to "a business" engaged in the transportation of tobacco products. While Appellee contends that "the meaning of transporter is clear," the regulatory scheme actually would have precluded an individual employee like Magnant from obtaining a transporter license.

Appellee also discusses how "a complete reading of the TPTA [allegedly] demonstrates the necessity of prohibiting defendant's conduct." (Answer at 16-17.) According to Appellee, "if 'low-level employees' are allowed to import out-of-state tobacco products and transport them without a license and sell those products at retail without complying with the reporting and record-keeping requirements, as Defendant did, the TPTA would be rendered meaningless." (*Id.* at 16, 20.) Arguments about the "importation" or "sale" of cigarettes are misplaced here. (See *also id.* at 17, 19.) There is no record evidence that Magnant imported the cigarettes from out of state or that he sold cigarettes at retail. Rather, the charge here is based solely on Magnant being a passenger in a pickup truck pulling a small trailer containing cigarettes—all of which were owned by his employer, KBIC—from the Tribe's reservation lands to its casino—all within Michigan.

Moreover, as the Court of Appeals' dissent correctly recognized, prosecuting a low-level employee with no meaningful control over his employer's operation *instead of the true*

*transporter—the employer*—is contrary to the fundamental purposes of the TPTA (*i.e.*, it “would not further the goal of ensuring tax revenue is properly collected from the ultimate consumers of tobacco products”) and “amounts to an overreach that makes a mockery of both the Legislature’s intent and fundamental justice.”<sup>2</sup> (Dissent at 4-7.) Prosecuting an unknowing employee for the alleged misconduct of his employer is, as aptly recognized by the dissent, tantamount to adopting an un-precedented doctrine of *respondeat inferior*. (*Id.* at 5 n.6, 8.)

The statutory requirements for a “transporter” beg the issue of whether one falls within—or has the requisite fair notice of falling within—the definition of a “transporter” in the first place. It is absurd to argue that one should know that one falls within the definition of a “transporter” because, as a “transporter,” one is required to have the license and permit in one’s possession. (Answer at 19-20.) The pertinent inquiry is how can an individual be prosecuted for not having a transporter license that he could not have obtained even if he had sought one? While Appellee touts the maxim that “[i]gnorance of the law does not excuse violation of the same” (*id.* at 21), this assumes the existence of a law that provides the constitutionally-required fair notice of the conduct that it proscribes—which does not exist here. *Cf. Rehaif*, 2019 U.S. Lexis 4199, at \*14-15.

Finally, Appellee contends that, “in prosecuting all sorts of smuggling cases, it is normal and proper to start at the lowest level employees and work one’s way up,” and that, rather than being charged with a higher-level smuggling offense, Magnant “was only charged with one low level felony” and “he is very unlikely to receive any incarceration.” (Answer at 20-21.) The prospect of a non-custodial sentence provides Magnant little comfort. Even a “low level felony”

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<sup>2</sup> Interestingly, Appellee now writes that “[t]hose who transport tobacco products that are sold in Michigan must obtain a license and must file *tax returns* with Treasury documenting the movement of the tobacco products to other licensees or retail stores.” (Answer at 16.)(emphasis added). The requirement for a “transporter” to file tobacco tax returns cannot be construed to apply to individual, low-level employees.

conviction would inflict significant, life-long damage to Magnant's reputation and his future life prospects, not to mention possible incarceration and imposition of a \$50,000 fine, probation that would impose severe restrictions on his liberty,<sup>3</sup> and a multitude of other devastating, life-long collateral consequences. In any event, Magnant prosecution is not the first step in any purported effort by Appellee to "work one's way up." Despite that the truck, trailer, and cigarettes belonged to KBIC, this "smuggling case" begins and ends with the prosecution of two low-level employees who could not even have individually obtained a transporter license had they sought one.

## II. CONCLUSION AND REQUEST FOR RELIEF

Wherefore, Magnant respectfully requests that this Honorable Court reverse the Court of Appeals' decision affirming the trial court's denial of Defendants' Joint Motion to Quash the Information and Joint Motion to Dismiss for Due Process Violation and dismiss this case.

Respectfully submitted,

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<sup>3</sup> *CF. Gall v. U.S.*, 552 U.S. 38, 48-49 (2007), for a thorough discussion of the punitive nature of even a probationary sentence.

# EXHIBIT 1



Neutral

As of: June 24, 2019 6:30 PM Z

## **Rehaif v. United States**

Supreme Court of the United States

April 23, 2019, Argued; June 21, 2019, Decided

No. 17-9560.

### Reporter

2019 U.S. LEXIS 4199 \*

HAMID MOHAMED AHMED ALI REHAIF, PETITIONER v. UNITED STATES

**Notice:** The LEXIS pagination of this document is subject to change pending release of the final published version.**Prior History:** [\*1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT[United States v. Rehaif, 888 F.3d 1138, 2018 U.S. App. LEXIS 7538 \(11th Cir. Fla., Mar. 26, 2018\)](#)**Disposition:** [888 F. 3d 1138](#), reversed and remanded.

## Core Terms

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knowingly, firearm, convicted, alien, unlawfully, partner, ammunition, commerce, illegally, statutes, categories, intimate, mens rea, scienter, applies, jurisdictional, mens rea requirement, possession of a firearm, provisions, gun, imprisonment, punishable, possessed, court of appeals, statutory text, require proof, violates, cases, criminal statute, innocent

## Case Summary

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### Overview

**HOLDINGS:** [1]-The court of appeals erred in affirming the conviction of defendant for possessing firearms as an alien unlawfully in the U.S., in violation of 18 U.S.C.S. § 922(g) and § 924(a)(2), without proof that he knew he was in the U.S. unlawfully, because the Government had to prove both that defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.

### Outcome

Judgment reversed and case remanded. 7-2 Decision; 1 Dissent.

## LexisNexis® Headnotes

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Criminal Law &amp; Procedure &gt; Criminal Offenses &gt; Weapons Offenses &gt; Possession of Weapons

**Possession of Weapons**

18 U.S.C.S. § 922(g) provides that it shall be unlawful for certain individuals to possess firearms. The provision lists nine categories of individuals subject to the prohibition, including felons and aliens who are “illegally or unlawfully in the United States.” A separate provision, 18 U.S.C.S. § 924(a)(2), adds that anyone who “knowingly violates” the first provision shall be fined or imprisoned for up to 10 years.

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

#### [HN2](#) Possession of Weapons

The word “knowingly” in 18 U.S.C.S. § 924(a)(2) applies both to the defendant’s conduct and to the defendant’s status. To convict a defendant, the Government therefore must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.

Governments > Legislation > Interpretation

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Knowledge

#### [HN3](#) Interpretation

Whether a criminal statute requires the Government to prove that the defendant acted knowingly is a question of congressional intent. In determining Congress’ intent, the U.S. Supreme Court starts from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct. The Court normally characterizes this interpretive maxim as a presumption in favor of “scienter,” by which it means a presumption that criminal statutes require the degree of knowledge sufficient to make a person legally responsible for the consequences of his or her act or omission. The Court applies the presumption in favor of scienter even when Congress does not specify any scienter in the statutory text. But the presumption applies with equal or greater force when Congress includes a general scienter provision in the statute itself. When a statute prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

#### [HN4](#) Possession of Weapons

The text of 18 U.S.C.S. § 924(a)(2) says that whoever knowingly violates certain subsections of 18 U.S.C.S. § 922, including § 922(g), “shall be” subject to penalties of up to 10 years’ imprisonment. The text of § 922(g) in turn provides that it shall be unlawful for any person, being an alien illegally or unlawfully in the United States, to possess in or affecting commerce, any firearm or ammunition.

Governments > Legislation > Interpretation

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

#### [HN5](#) Interpretation



The text of *18 U.S.C.S. § 922(g)* simply lists the elements that make a defendant's behavior criminal. As a matter of ordinary English grammar, the U.S. Supreme Court normally reads the statutory term "knowingly" as applying to all the subsequently listed elements of the crime.

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Knowledge

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

#### [HN6](#) **Knowledge**

By specifying that a defendant may be convicted only if he "knowingly violates" *18 U.S.C.S. § 922(g)*, Congress intended to require the Government to establish that the defendant knew he violated the material elements of § 922(g).

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Knowledge

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

#### [HN7](#) **Knowledge**

Applying the word "knowingly" to the defendant's status in *18 U.S.C.S. § 922(g)* helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts. Assuming compliance with ordinary licensing requirements, the possession of a gun can be entirely innocent. It is therefore the defendant's status, and not his conduct alone, that makes the difference. Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach.

Criminal Law & Procedure > Criminal Offenses > Acts & Mental States

#### [HN8](#) **Acts & Mental States**

The U.S. Supreme Court has sometimes declined to read a scienter requirement into criminal statutes. But the Court has typically declined to apply the presumption in favor of scienter in cases involving statutory provisions that form part of a "regulatory" or "public welfare" program and carry only minor penalties.

Criminal Law & Procedure > Defenses > Ignorance & Mistake of Law

#### [HN9](#) **Ignorance & Mistake of Law**

The maxim "ignorance of the law" (or a "mistake of law") is no excuse normally applies where a defendant has the requisite mental state in respect to the elements of the crime but claims to be unaware of the existence of a statute proscribing his conduct. In contrast, the maxim does not normally apply where a defendant has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct, thereby negating an element of the offense. A mistake of law is a defense if the mistake negates the knowledge required to establish a material element of the offense. Much of the confusion surrounding the ignorance-of-the-law maxim stems from the failure to distinguish these two quite different situations.

Criminal Law & Procedure > Criminal Offenses > Weapons Offenses > Possession of Weapons

## [HN10](#) Possession of Weapons

In a prosecution under 18 U.S.C.S. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.

## Syllabus

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Petitioner Rehaif entered the United States on a nonimmigrant student visa to attend university but was dismissed for poor grades. He subsequently shot two firearms at a firing range. The Government prosecuted him under 18 U.S.C. §922(g), which makes it unlawful for certain persons, including aliens illegally in the country, to possess firearms, and §924(a)(2), which provides that anyone who “knowingly violates” the first provision can be imprisoned for up to 10 years. The jury at Rehaif’s trial was instructed that the Government was not required to prove that he knew that he was unlawfully in the country. It returned a guilty verdict. The Eleventh Circuit affirmed.

*Held:* In a prosecution under §922(g) and §924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm. Pp. 3-12.

(a) Whether a criminal statute requires the Government to prove that the defendant acted knowingly is a question of congressional intent. This inquiry starts from a longstanding presumption that Congress intends to require [\*2] a defendant to possess a culpable mental state regarding “each of the statutory elements that criminalize otherwise innocent conduct,” [United States v. X-Citement Video, Inc.](#), 513 U. S. 64, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372, normally characterized as a presumption in favor of “scienter.” There is no convincing reason to depart from this presumption here.

The statutory text supports the presumption. It specifies that a defendant commits a crime if he “knowingly” violates §922(g), which makes possession of a firearm unlawful when the following elements are satisfied: (1) a status element (here “being an alien . . . illegally or unlawfully in the United States”); (2) a possession element (to “possess”); (3) a jurisdictional element (“in or affecting commerce”); and (4) a firearm element (a “firearm or ammunition”). Aside from the jurisdictional element, which is not subject to the presumption in favor of scienter, §922(g)’s text simply lists the elements that make a defendant’s behavior criminal. The term “knowingly” is normally read “as applying to all the subsequently listed elements of the crime.” [Flores-Figueroa v. United States](#), 556 U. S. 646, 650, 129 S. Ct. 1886, 173 L. Ed. 2d 853. And the “knowingly” requirement clearly applies to §922(g)’s possession element, which follows the status element in the statutory text. There is no basis for interpreting “knowingly” as applying [\*3] to the second §922(g) element but not the first.

This reading of the statute is also consistent with a basic principle underlying the criminal law: the importance of showing what Blackstone called “a vicious will.” Scienter requirements advance this principle by helping to separate wrongful from innocent acts. That is the case here. Possessing a gun can be entirely innocent. It is the defendant’s *status*, not his conduct alone, that makes the difference. Without knowledge of that status, a defendant may lack the intent needed to make his behavior wrongful. Pp. 3-7.

(b) The Government’s arguments to the contrary are unpersuasive. In claiming that Congress does not normally require defendants to know their own status, it points to statutes where the defendant’s status is the “crucial element” separating innocent from wrongful conduct. [X-Citement Video](#), *supra*, at 73, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372. Those statutes are quite different from the provisions at issue here, where the defendant’s status separates innocent from wrongful conduct. The Government also argues that whether an alien is “illegally or unlawfully in the

United States” is a question of law, not fact, and thus appeals to the maxim that “ignorance of the law” is no excuse. But that maxim normally [\*4] applies where a defendant possesses the requisite mental state in respect to the elements of the crime but claims to be unaware of a law forbidding his conduct. That maxim does not normally apply where a defendant’s mistaken impression about a collateral legal question causes him to misunderstand his conduct’s significance, thereby negating an element of the offense. Rehaif’s status as an alien “illegally or unlawfully in the United States” refers to what commentators call a “collateral” question of law, and a mistake regarding that status negates an element of the offense. Finally, the statutory and legislative history on which the Government relies is at best inclusive. Pp. 7-11.

[888 F. 3d 1138](#), reversed and remanded.

**Counsel:** Rosemary T. Cakmis argued the cause for petitioner.

**Allon Kedem** argued the cause for respondent.

**Judges:** Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Ginsburg, Sotomayor, Kagan, Gorsuch, and Kavanaugh, JJ., joined. Alito, J., filed a dissenting opinion, in which Thomas, J., joined.

**Opinion by:** BREYER

## Opinion

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JUSTICE BREYER delivered the opinion of the Court.

A federal statute, [HN1](#)<sup>↑</sup> 18 U. S. C. §922(g), provides that “[i]t shall be unlawful” for certain individuals to possess firearms. The provision lists nine categories of individuals subject to the prohibition, including felons and aliens who are “illegally [\*5] or unlawfully in the United States.” *Ibid.* A separate provision, §924(a)(2), adds that anyone who “knowingly violates” the first provision shall be fined or imprisoned for up to 10 years. (Emphasis added.)

The question here concerns the scope of the word “knowingly.” Does it mean that the Government must prove that a defendant knew both that he engaged in the relevant conduct (that he possessed a firearm) and also that he fell within the relevant status (that he was a felon, an alien unlawfully in this country, or the like)? We hold that [HN2](#)<sup>↑</sup> the word “knowingly” applies both to the defendant’s conduct and to the defendant’s status. To convict a defendant, the Government therefore must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.

I

Petitioner Hamid Rehaif entered the United States on a nonimmigrant student visa to attend university. After he received poor grades, the university dismissed him and told him that his “immigration status” would be terminated unless he transferred to a different university or left the country. App. to Pet. for Cert. 3a. Rehaif did neither.

Rehaif subsequently visited a firing range, where he shot [\*6] two firearms. The Government learned about his target practice and prosecuted him for possessing firearms as an alien unlawfully in the United States, in violation of §922(g) and §924(a)(2). At the close of Rehaif’s trial, the judge instructed the jury (over Rehaif’s objection) that the “United States is not required to prove” that Rehaif “knew that he was illegally or unlawfully in the United States.” App. to Pet. for Cert. 4a (internal quotation marks omitted). The jury returned a guilty verdict, and Rehaif was sentenced to 18 months’ imprisonment.

Rehaif appealed. He argued that the judge erred in instructing the jury that it did not need to find that he knew he was in the country unlawfully. The Court of Appeals for the Eleventh Circuit, however, concluded that the jury instruction was correct, and it affirmed Rehaif’s conviction. See [888 F. 3d 1138, 1148 \(2018\)](#). The Court of Appeals

believed that the criminal law generally does not require a defendant to know his own status, and further observed that no court of appeals had required the Government to establish a defendant's knowledge of his status in the analogous context of felon-in-possession prosecutions. *Id.*, at 1145-1146.

We granted certiorari to consider whether, in prosecutions under [\*7] §922(g) and §924(a)(2), the Government must prove that a defendant knows of his status as a person barred from possessing a firearm. We now reverse.

II

**HN3** [↑] Whether a criminal statute requires the Government to prove that the defendant acted knowingly is a question of congressional intent. See *Staples v. United States*, 511 U. S. 600, 605, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994). In determining Congress' intent, we start from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding "each of the statutory elements that criminalize otherwise innocent conduct." *United States v. X-Citement Video, Inc.*, 513 U. S. 64, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994); see also *Morissette v. United States*, 342 U. S. 246, 256-258, 72 S. Ct. 240, 96 L. Ed. 288 (1952). We normally characterize this interpretive maxim as a presumption in favor of "scienter," by which we mean a presumption that criminal statutes require the degree of knowledge sufficient to "mak[e] a person legally responsible for the consequences of his or her act or omission." Black's Law Dictionary 1547 (10th ed. 2014).

We apply the presumption in favor of scienter even when Congress does not specify any scienter in the statutory text. See *Staples*, 511 U. S., at 606, 114 S. Ct. 1793, 128 L. Ed. 2d 608. But the presumption applies with equal or greater force when Congress includes a general scienter provision in the statute itself. See ALI, *Model Penal Code* §2.02(4), p. 22 (1985) (when a statute "prescribes the kind of culpability [\*8] that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears").

A

Here we can find no convincing reason to depart from the ordinary presumption in favor of scienter. The statutory text supports the presumption. **HN4** [↑] The text of §924(a)(2) says that "[w]hoever knowingly violates" certain subsections of §922, including §922(g), "shall be" subject to penalties of up to 10 years' imprisonment. The text of §922(g) in turn provides that it "shall be unlawful for any person . . . , being an alien . . . illegally or unlawfully in the United States," to "possess in or affecting commerce, any firearm or ammunition."

The term "knowingly" in §924(a)(2) modifies the verb "violates" and its direct object, which in this case is §922(g). The proper interpretation of the statute thus turns on what it means for a defendant to know that he has "violat[e]d" §922(g). With some here-irrelevant omissions, §922(g) makes possession of a firearm or ammunition unlawful when the following elements are satisfied: (1) a status element (in this case, "being an alien . . . illegally or unlawfully in the United States"); (2) a [\*9] possession element (to "possess"); (3) a jurisdictional element ("in or affecting commerce"); and (4) a firearm element (a "firearm or ammunition").

No one here claims that the word "knowingly" modifies the statute's jurisdictional element. Jurisdictional elements do not describe the "evil Congress seeks to prevent," but instead simply ensure that the Federal Government has the constitutional authority to regulate the defendant's conduct (normally, as here, through its *Commerce Clause* power). *Luna Torres v. Lynch*, 578 U. S. , - , 136 S. Ct. 1619, 194 L. Ed. 2d 737, 758 (2016). Because jurisdictional elements normally have nothing to do with the wrongfulness of the defendant's conduct, such elements are not subject to the presumption in favor of scienter. See *id.*, at , 136 S. Ct. 1619, 194 L. Ed. 2d 737 (slip op., at 16).

Jurisdictional element aside, however, **HN5** [↑] the text of §922(g) simply lists the elements that make a defendant's behavior criminal. As "a matter of ordinary English grammar," we normally read the statutory term "'knowingly' as applying to all the subsequently listed elements of the crime." *Flores-Figueroa v. United States*, 556 U. S. 646, 650, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009); see also *id.*, at 652, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (we "ordinarily read a phrase in a criminal statute that introduces the elements of a crime with the word 'knowingly'

as applying that word to each element”). This is notably not a case where the modifier “knowingly” introduces [\*10] a long statutory phrase, such that questions may reasonably arise about how far into the statute the modifier extends. See *id.*, at 659, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (Alito, J., concurring in part). And everyone agrees that the word “knowingly” applies to §922(g)’s possession element, which is situated after the status element. We see no basis to interpret “knowingly” as applying to the second §922(g) element but not the first. See *United States v. Games-Perez*, 667 F. 3d 1136, 1143 (CA10 2012) (Gorsuch, J., concurring). To the contrary, we think that *HN6* [↑] by specifying that a defendant may be convicted only if he “knowingly violates” §922(g), Congress intended to require the Government to establish that the defendant knew he violated the material elements of §922(g).

B

Beyond the text, our reading of §922(g) and §924(a)(2) is consistent with a basic principle that underlies the criminal law, namely, the importance of showing what Blackstone called “a vicious will.” 4 W. Blackstone, Commentaries on the Laws of England 21 (1769). As this Court has explained, the understanding that an injury is criminal only if inflicted knowingly “is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.” *Morissette*, 342 U. S., at 250, 72 S. Ct. 240, 96 L. Ed. 288. Scier requirements [\*11] advance this basic principle of criminal law by helping to “separate those who understand the wrongful nature of their act from those who do not.” *X-Citement Video*, 513 U. S., at 72-73, n. 3, 115 S. Ct. 464, 130 L. Ed. 372.

The cases in which we have emphasized scier’s importance in separating wrongful from innocent acts are legion. See, e.g., *id.*, at 70, 115 S. Ct. 464, 130 L. Ed. 372; *Staples*, 511 U. S., at 610; *Liparota v. United States*, 471 U. S. 419, 425, 105 S. Ct. 2084, 85 L. Ed. 2d 434 (1985); *United States v. Bailey*, 444 U. S. 394, 406, n. 6, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980); *United States v. United States Gypsum Co.*, 438 U. S. 422, 436, 98 S. Ct. 2864, 57 L. Ed. 2d 854 (1978); *Morissette*, 342 U. S., at 250-251, 72 S. Ct. 240, 96 L. Ed. 288. We have interpreted statutes to include a scier requirement even where the statutory text is silent on the question. See *Staples*, 511 U. S., at 605, 114 S. Ct. 1793, 128 L. Ed. 2d 608. And we have interpreted statutes to include a scier requirement even where “the most grammatical reading of the statute” does not support one. *X-Citement Video*, 513 U. S., at 70, 115 S. Ct. 464, 130 L. Ed. 372.

*HN7* [↑] Applying the word “knowingly” to the defendant’s status in §922(g) helps advance the purpose of scier, for it helps to separate wrongful from innocent acts. Assuming compliance with ordinary licensing requirements, the possession of a gun can be entirely innocent. See *Staples*, 511 U. S., at 611, 114 S. Ct. 1793, 128 L. Ed. 2d 608. It is therefore the defendant’s status, and not his conduct alone, that makes the difference. Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach. Cf. O. Holmes, *The Common Law* 3 (1881) (“even a dog distinguishes between [\*12] being stumbled over and being kicked”).

*HN8* [↑] We have sometimes declined to read a scier requirement into criminal statutes. See *United States v. Balint*, 258 U. S. 250, 254, 42 S. Ct. 301, 66 L. Ed. 604, T.D. 3375 (1922). But we have typically declined to apply the presumption in favor of scier in cases involving statutory provisions that form part of a “regulatory” or “public welfare” program and carry only minor penalties. See *Staples*, 511 U. S., at 606, 114 S. Ct. 1793, 128 L. Ed. 2d 608; *Morissette*, 342 U. S., at 255-259, 72 S. Ct. 240, 96 L. Ed. 288. The firearms provisions before us are not part of a regulatory or public welfare program, and they carry a potential penalty of 10 years in prison that we have previously described as “harsh.” *X-Citement Video*, 513 U. S., at 72, 115 S. Ct. 464, 130 L. Ed. 372. Hence, this exception to the presumption in favor of scier does not apply.

III

The Government’s arguments to the contrary do not convince us that Congress sought to depart from the normal presumption in favor of scier.

The Government argues that Congress does not normally require defendants to know their own status. But the Government supports this claim primarily by referring to statutes that differ significantly from the provisions at issue



here. One of these statutes prohibits “an officer, employee, contractor, or consultant of the United States” from misappropriating classified information. [18 U. S. C. §1924\(a\)](#). Another statute applies to anyone “at least eighteen [\*13] years of age” who solicits a minor to help avoid detection for certain federal crimes. [21 U. S. C. §861\(a\)\(2\)](#). A third applies to a “parent [or] legal guardian” who allows his child to be used for child pornography. [18 U. S. C. §2251\(b\)](#).

We need not decide whether we agree or disagree with the Government’s interpretation of these statutes. In the provisions at issue here, the defendant’s status is the “crucial element” separating innocent from wrongful conduct. [X-Citement Video](#), 513 U. S., at 73, 115 S. Ct. 464, 130 L. Ed. 372. But in the statutes cited by the Government, the conduct prohibited—misappropriating classified information, seeking to evade detection for certain federal crimes, and facilitating child pornography—would be wrongful irrespective of the defendant’s status. This difference assures us that the presumption in favor of scienter applies here even assuming the Government is right that these other statutes do not require knowledge of status.

Nor do we believe that Congress would have expected defendants under §922(g) and §924(a)(2) to know their own statuses. If the provisions before us were construed to require no knowledge of status, they might well apply to an alien who was brought into the United States unlawfully as a small child and was therefore unaware of his unlawful status. Or these [\*14] provisions might apply to a person who was convicted of a prior crime but sentenced only to probation, who does not know that the crime is “punishable by imprisonment for a term exceeding one year.” §922(g)(1) (emphasis added); see also [Games-Perez](#), 667 F. 3d, at 1138 (defendant held strictly liable regarding his status as a felon even though the trial judge had told him repeatedly—but incorrectly—that he would “leave this courtroom not convicted of a felony”). As we have said, we normally presume that Congress did not intend to impose criminal liability on persons who, due to lack of knowledge, did not have a wrongful mental state. And we doubt that the obligation to prove a defendant’s knowledge of his status will be as burdensome as the Government suggests. See [Staples](#), 511 U. S., at 615, n. 11, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (“knowledge can be inferred from circumstantial evidence”).

The Government also argues that whether an alien is “illegally or unlawfully in the United States” is a question of law, not fact, and thus appeals to the well-known maxim that “ignorance of the law” (or a “mistake of law”) is no excuse. [Cheek v. United States](#), 498 U. S. 192, 199, 111 S. Ct. 604, 112 L. Ed. 2d 617 (1991).

[HN9](#) [↑] This maxim, however, normally applies where a defendant has the requisite mental state in respect to the elements of the crime but claims to be “unaware of the existence [\*15] of a statute proscribing his conduct.” 1 W. LaFare & A. Scott, Substantive Criminal Law §5.1(a), p. 575 (1986). In contrast, the maxim does not normally apply where a defendant “has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct,” thereby negating an element of the offense. *Ibid.*; see also Model Penal Code [§2.04](#), at 27 (a mistake of law is a defense if the mistake negates the “knowledge . . . required to establish a material element of the offense”). Much of the confusion surrounding the ignorance-of-the-law maxim stems from “the failure to distinguish [these] two quite different situations.” LaFare, Substantive Criminal Law §5.1(d), at 585.

We applied this distinction in *Liparota*, where we considered a statute that imposed criminal liability on “whoever knowingly uses, transfers, acquires, alters, or possesses” food stamps “in any manner not authorized by the statute or the regulations.” [471 U. S., at 420, 105 S. Ct. 2084, 85 L. Ed. 2d 434](#) (quotation altered). We held that the statute required scienter not only in respect to the defendant’s use of food stamps, but also in respect to whether the food stamps were used in a “manner not authorized [\*16] by the statute or regulations.” *Id.*, at 425, n. 9, 105 S. Ct. 2084, 85 L. Ed. 2d 434. We therefore required the Government to prove that the defendant knew that his use of food stamps was unlawful—even though that was a question of law. See [ibid.](#)

This case is similar. The defendant’s status as an alien “illegally or unlawfully in the United States” refers to a legal matter, but this legal matter is what the commentators refer to as a “collateral” question of law. A defendant who does not know that he is an alien “illegally or unlawfully in the United States” does not have the guilty state of mind that the statute’s language and purposes require.

The Government finally turns for support to the statutory and legislative history. Congress first enacted a criminal statute prohibiting particular categories of persons from possessing firearms in 1938. See [Federal Firearms Act, 52 Stat. 1250](#). In 1968, Congress added new categories of persons subject to the prohibition. See [Omnibus Crime Control and Safe Streets Act, 82 Stat. 197](#). Then, in 1986, Congress passed the statute at issue here, the *Firearms Owners' Protection Act*, 100 Stat. 449, note following 18 U. S. C. §921, which reorganized the prohibition on firearm possession and added the language providing that only those who violate the prohibition [\*17] “knowingly” may be held criminally liable.

The Government says that, prior to 1986, the courts had reached a consensus that the law did not require the Government to prove scienter regarding a defendant's status. And the Government relies on the interpretive canon providing that when particular statutory language has received a settled judicial construction, and Congress subsequently reenacts that “same language,” courts should presume that Congress intended to ratify the judicial consensus. [Helsinn Healthcare S. A. v. Teva Pharmaceuticals USA, Inc., 586 U. S. \\_\\_\\_\\_\\_, 139 S. Ct. 628, 202 L. Ed. 2d 551, 559 \(2019\)](#).

Prior to 1986, however, there was no definitive judicial consensus that knowledge of status was not needed. This Court had not considered the matter. As the Government says, most lower courts had concluded that the statute did not require knowledge of status. See, e.g., [United States v. Pruner, 606 F. 2d 871, 874 \(CA9 1979\)](#). But the Sixth Circuit had held to the contrary, specifically citing the risk that a defendant “may not be aware of the fact” that barred him from possessing a firearm. [United States v. Renner, 496 F. 2d 922, 926 \(1974\)](#). And the Fourth Circuit had found that knowledge of a defendant's status was not needed because the statute “[b]y its terms” did not require knowledge of status. [United States v. Williams, 588 F. 2d 92 \(1978\)](#) (*per curiam*).


This last-mentioned circumstance is important. Any pre-1986 consensus involved the statute [\*18] as it read prior to 1986—without any explicit scienter provision. But Congress in 1986 added a provision clarifying that a defendant could be convicted only if he violated the prohibition on firearm possession “knowingly.” This addition, which would serve no apparent purpose under the Government's view, makes it all but impossible to draw any inference that Congress intended to ratify a pre-existing consensus when, in 1986, it amended the statute.

The Government points to the House Report on the legislation, which says that the 1986 statute would require the Government to prove “that the defendant's *conduct* was knowing.” H. R. Rep. No. 99-495, p. 10 (1986) (emphasis added). Although this statement speaks of “conduct” rather than “status,” context suggests that the Report may have meant the former to include the latter. In any event, other statements suggest that the word “knowingly” was intended to apply to both conduct and status. The Senate Report, for example, says that the proposed amendments sought to exclude “individuals who lack all criminal intent and knowledge,” without distinguishing between conduct and status. S. Rep. No. 97-476, p. 15 (1982). And one Senate sponsor of the [\*19] bill pointed out that the absence of a scienter requirement in the prior statutes had resulted in “severe penalties for unintentional missteps.” 132 Cong. Rec. 9590 (1986) (statement of Sen. Hatch).

Thus, assuming without deciding that statutory or legislative history could overcome the longstanding presumption in favor of scienter, that history here is at best inconclusive.

\*\*\*

The Government asks us to hold that any error in the jury instructions in this case was harmless. But the lower courts did not address that question. We therefore leave the question for those courts to decide on remand. See [Thacker v. TVA, 587 U. S. \\_\\_\\_\\_\\_, 139 S. Ct. 1435, 203 L. Ed. 2d 668, 678 \(2019\)](#) (citing [Cutter v. Wilkinson, 544 U. S. 709, 718, n. 7, 125 S. Ct. 2113, 161 L. Ed. 2d 1020 \(2005\)](#)).

We conclude that [HN10](#) in a prosecution under 18 U. S. C. §922(g) and §924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm. We express no view, however, about what precisely the Government must prove to establish a defendant's knowledge of status in respect to other §922(g) provisions not at issue here. See *post*, at 13-15 (Alito, J., dissenting) (discussing other statuses listed in §922(g) not at issue here). We

accordingly reverse the judgment of the Court of Appeals and remand the case for further [\*20] proceedings consistent with this opinion.

*It is so ordered.*

## APPENDIX

18 U. S. C. §924(a)(2)

“Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.”

18 U. S. C. §922(g)

“It shall be unlawful for any person—

“(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

“(2) who is a fugitive from justice;

“(3) who is an unlawful user of or addicted to any controlled substance . . . ;

“(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

“(5) who, being an alien—(A) is illegally or unlawfully in the United States; or (B) . . . has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the *Immigration and Nationality Act* (8 U.S.C. 1101(a)(26)));

“(6) who has been discharged from the Armed Forces under dishonorable conditions;

“(7) who, having been a citizen of the United States, has renounced his citizenship;

“(8) who is subject to a court order that—(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or [\*21] child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

**Dissent by:** ALITO

## Dissent

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JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

The Court casually overturns the long-established interpretation of an important criminal statute, 18 U. S. C. §922(g), an interpretation that has been adopted by every single Court of Appeals to address the question. That interpretation has been used in thousands of cases for more than 30 years. According to the majority, every



one [\*22] of those cases was flawed. So today's decision is no minor matter. And §922(g) is no minor provision. It probably does more to combat gun violence than any other federal law. It prohibits the possession of firearms by, among others, convicted felons, mentally ill persons found by a court to present a danger to the community, stalkers, harassers, perpetrators of domestic violence, and illegal aliens.

Today's decision will make it significantly harder to convict persons falling into some of these categories, and the decision will create a mountain of problems with respect to the thousands of prisoners currently serving terms for §922(g) convictions. Applications for relief by federal prisoners sentenced under §922(g) will swamp the lower courts. A great many convictions will be subject to challenge, threatening the release or retrial of dangerous individuals whose cases fall outside the bounds of harmless-error review. See *ante*, at 11.

If today's decision were compelled by the text of §922(g) or by some other clear indication of congressional intent, what the majority has done would be understandable. We must enforce the laws enacted by Congress even if we think that doing so will bring about unfortunate results. [\*23] But that is not the situation in this case. There is no sound basis for today's decision. Indeed, there was no good reason for us to take this case in the first place. No conflict existed in the decisions of the lower courts, and there is no evidence that the established interpretation of §922(g) had worked any serious injustice.

The push for us to grant review was based on the superficially appealing but ultimately fallacious argument that the text of §922(g) dictates the interpretation that the majority now reaches. See Pet. for Cert. 8. Ironically, today's decision, while casting aside the established interpretation of §922(g), does not claim that the text of that provision is itself dispositive. Instead, what the majority relies on, in the end, is its own guess about *congressional intent*. And the intent that the majority attributes to Congress is one that Congress almost certainly did not harbor.

I

The majority provides a bowdlerized version of the facts of this case and thus obscures the triviality of this petitioner's claim. The majority wants readers to have in mind an entirely imaginary case, a heartless prosecution of "an alien who was brought into the United States unlawfully as a small child and [\*24] was therefore unaware of his unlawful status." *Ante*, at 8. Such a defendant would indeed warrant sympathy, but that is not petitioner, and no one has called to our attention any real case like the one the majority conjures up.

Here is what really happened. Petitioner, a citizen of the United Arab Emirates, entered this country on a visa that allowed him to stay here lawfully only so long as he remained a full-time student. [888 F. 3d 1138, 1140 \(CA11 2018\)](#). He enrolled at the Florida Institute of Technology, but he withdrew from or failed all of his classes and was dismissed. Brief for Petitioner 4-5. After he was conditionally readmitted, he failed all but one of his courses. His enrollment was then terminated, and he did not appeal. The school sent him e-mails informing him that he was no longer enrolled and that, unless he was admitted elsewhere, his status as a lawful alien would be terminated. [888 F. 3d, at 1140-1141](#). Petitioner's response was to move to a hotel and frequent a firing range. Each evening he checked into the hotel and always demanded a room on the eighth floor facing the airport. Each morning he checked out and paid his bill with cash, spending a total of more than \$11,000. This went on for 53 days. Brief for United States [\*25] 4. A hotel employee told the FBI that petitioner claimed to have weapons in his room. Arrested and charged under §922(g) for possession of a firearm by an illegal alien, petitioner claimed at trial that the Government had to prove beyond a reasonable doubt that he actually knew that his lawful status had been terminated. Following what was then the universal and long-established interpretation of §922(g), the District Court rejected this argument, and a jury found him guilty. [888 F. 3d, at 1141](#). The Eleventh Circuit affirmed. [Id., at 1140](#). Out of the more than 8,000 petitions for a writ of certiorari that we expected to receive this Term, we chose to grant this one to see if petitioner had been deprived of the right to have a jury decide whether, in his heart of hearts, he really knew that he could not lawfully remain in the United States on a student visa when he most certainly was no longer a student.

II

A

Petitioner claims that the texts of §922(g) and a companion provision, 18 U. S. C. §924(a)(2), dictate a decision in his favor, and I therefore begin with the text of those two provisions. *Section 924(a)(2)* provides in relevant part as follows:

“Whoever *knowingly* violates subsection . . . (g) of *section 922* shall be fined as provided in this title, imprisoned for not more than 10 [\*26] years, or both.” (Emphasis added.)

*Section 922(g)*, in turn, makes it unlawful for nine categories of persons to engage in certain interstate-commerce-related conduct involving firearms. These categories consist of: (1) convicted felons; (2) fugitives from justice; (3) users of illegal drugs or addicts; (4) persons found to have very serious mental problems; (5) illegal aliens; (6) individuals who were dishonorably discharged from the Armed Forces; (7) persons who renounced U. S. citizenship; (8) stalkers, harassers, and abusers subject to restraining orders; and (9) persons convicted of a misdemeanor crime of domestic violence.<sup>1</sup> Persons falling into these categories are forbidden, as relevant here, to “possess in or affecting commerce, any firearm.”

Petitioner argues that, when §924(a)(2) and §922(g) are put together, they unambiguously show that a defendant must actually know that he falls into one of the nine enumerated categories. But this purportedly textual argument requires some moves that cannot be justified on the basis of the statutory text. Petitioner’s argument tries to hide those moves in the manner of a sleight-of-hand artist at a carnival.

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<sup>1</sup> Title 18 U. S. C. §922(g) provides as follows:

“It shall be unlawful for any person—

“(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

“(2) who is a fugitive from justice;

“(3) who is an unlawful user of or addicted to any controlled substance (as defined in [section 102 of the Controlled Substances Act \(21 U. S. C. §802\)](#));

“(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

“(5) who, being an alien—

“(A) is illegally or unlawfully in the United States; or

“(B) except as provided in **subsection (y)(2)**, has been admitted to the United States under a nonimmigrant visa (as that term is defined in **section 101(a)(26) of the Immigration and Nationality Act (8 U. S. C. §1101(a)(26))**);

“(6) who has been discharged from the Armed Forces under dishonorable conditions;

“(7) who, having been a citizen of the United States, has renounced his citizenship;

“(8) who is subject to a court order that—

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

Petitioner begins by extracting the term “knowingly” from §924(a)(2). He [\*27] then transplants it into the beginning of §922(g), ignores the extraordinarily awkward prose that this surgery produces, and proclaims that because “knowingly” appears at the beginning of the enumeration of the elements of the §922(g) offense, we must assume that it modifies the first of those elements, *i.e.*, being a convicted felon, illegal alien, etc. To conclude otherwise, he contends, is to commit the sin of having the term “knowingly” leap over that element and then land conveniently in front of the second. Pet. for Cert. 8.

But petitioner’s reading is guilty of the very sort of leaping that it condemns—and then some. It has “knowingly” performed a jump of Olympian proportions, taking off from §924(a)(2), sailing backward over more than 9,000 words in the U. S. Code, and then landing—conveniently—at the beginning of the enumeration of the elements of the §922(g) offense. Of course, there is no logical reason why this jump has to land at that particular point in §922(g). That is petitioner’s first sleight of hand. But there is another.

What petitioner and those who have pressed this leaping argument want §922(g) to say is essentially this: Whoever knowingly is an illegal alien and possesses a firearm shall be fined and/or imprisoned [\*28] if his possession of the gun was in or affecting interstate commerce. If we had before us a provision that reads like that, there would be a strong textual argument that a defendant’s status as an illegal alien must actually be known to him. That is essentially what we held in *Flores-Figueroa v. United States*, 556 U. S. 646, 652, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009). But when the term “knowingly” is excised from §924(a)(2) and inserted at the beginning of §922(g), what we get is something quite different:

**Whoever knowingly** . . . It is unlawful for any person . . . who, being an alien—is illegally or unlawfully in the United States . . . to possess in or affecting commerce, any firearm or ammunition . . .

Congress did not—and certainly would not—enact a statute that reads like that. To convert this garbled conglomeration into intelligible prose, editing is obviously needed, and the editing process would compel the editor to make decisions with substantive implications that could hardly go unnoticed. Here is a way of amalgamating §924(a)(1) and §922(g) that minimizes the changes in the language of the two provisions:

**Whoever knowingly** . . .

It is unlawful for any person . . . who, being an alien—is illegally or unlawfully in the United States . . . **and possesses** in or affecting commerce, any firearm or ammunition [\*29] . . . [commits a crime punishable by . . . .]

The most natural reading of this version is that the defendant must know only that he is an alien, not that his presence in the country is illegal or unlawful. And under this version, it is not even clear that the alien’s possession of the firearm or ammunition must be knowing—even though everyone agrees that this is required.

Here are two other possibilities that require more changes. The first is this:

**Whoever knowingly** . . .

It is unlawful for any person . . . who, being an alien **who**—is illegally or unlawfully in the United States . . .

to possesses in or affecting commerce, any firearm or ammunition . . . [commits a crime punishable by . . . .]

The second, which differs from the first only in that the clause “who is illegally or unlawfully in the United States” is set off by commas, is this:

**Whoever knowingly** . . .

It is unlawful for any person . . . who, being an alien, **who**—is illegally or unlawfully in the United States, . . .

to possesses in or affecting commerce, any firearm or ammunition . . . [commits a crime punishable by . . . .]

A strict grammarian, noting that the clause “who is legally or unlawfully in the United States” is restrictive [\*30] in the first of these versions and nonrestrictive in the second, might interpret the first to favor petitioner and the second

to favor the Government. And under both of these versions, it is again unclear whether a defendant's possession of the firearm or ammunition must be knowing.

All of the versions discussed so far place the term "knowingly" at the beginning of our transformed version of §922(g), but as noted, there is no reason why this term's leap from §924(a)(2) must land at that point. So our new version of §922(g) could just as logically read like this:

**Whoever . . .**

It is unlawful for any person . . . who, being an alien **who**—is illegally or unlawfully in the United States . . .

to **knowingly** possesses in or affecting commerce, any firearm or ammunition . . . [commits a crime punishable by . . .]

That would make it clear that the long-established interpretation of §922(g) is correct.

What these possibilities show is that any attempt to combine the relevant language from §924(a)(2) with the language of §922(g) necessarily entails significant choices that are not dictated by the text of those provisions. So the purportedly textualist argument that we were sold at the certiorari stage comes down to this: If §§922(g) and 924(a)(2) are arbitrarily [\*31] combined in the way that petitioner prefers, then, presto chango, they support petitioner's interpretation. What a magic trick!

B

The truth behind the illusion is that the terms used in §§924(a)(2) and 922(g), when read in accordance with their use in ordinary speech, can easily be interpreted to treat the question of *mens rea* in at least four different ways.

*First*, the language of §§924(a)(2) and 922(g) can be read to require that a defendant know that his conduct is a violation of §922(g). In ordinary speech, to knowingly violate a rule may mean to violate a known rule. ("He was told it is forbidden to smoke in the restroom of a plane, but he knowingly did so.") Neither petitioner nor the Government suggests that this is the proper interpretation of §§922(g) and 924(a)(2), but their reason is not based on the plain or ordinary meaning of the statutory text. Instead, it rests on an inference about congressional intent that, in turn, is based on a drafting convention, namely, that where Congress wants to require proof that a criminal defendant knew his conduct was illegal, it specifies that the violation must be "willful." In ordinary speech, "willfulness" does not require or even suggest knowledge of illegality. See Webster's Third New International [\*32] Dictionary 2617 (1976). But we have construed the term as used in statutes to mean the "intentional violation of a known legal duty." United States v. Bishop, 412 U. S. 346, 360, 93 S. Ct. 2008, 36 L. Ed. 2d 941 (1973). Thus, the pointed use of the term "knowingly," as opposed to "willfully," in §922(g), provides a ground to infer that Congress did not mean to require knowledge of illegality.

*Second*, a "knowing" violation could require knowledge of every element that makes up the offense. As applied to §922(g), that would mean that the Government would have to prove that the defendant: (1) knew that he is an alien "illegally or unlawfully in the United States," (2) knew that the thing he "possess[ed]" was "a firearm or ammunition," and (3) knew that what he did was "in or affecting commerce." But again, the parties (and the majority) disclaim this reading because, they contend, the *mens rea* requirement does not apply to the interstate-commerce element of the offense. To reach this conclusion, however, neither the parties nor the majority relies on the text. How could they? If positioning the term "knowingly" at the beginning of a list of elements (or incorporating it through a separate provision) means that it applies to every element, then it would have to apply to the interstate-commerce [\*33] element just like the others.

Once again, the conclusion that "knowingly" does not apply to the interstate-commerce element is not based on any rule of English usage but on yet another inference about congressional intent: that the question whether a defendant knew that his act of possessing a gun or ammunition was "in or affecting commerce" is simply not the sort of question that Congress wanted a jury to decide. The conclusion is sound, see, e.g., Luna Torres v. Lynch, 578 U. S. , , 136 S. Ct. 1619, 194 L. Ed. 2d 737, 742 (2016)). But the inference that this is not what Congress intended is in no way compelled by the text of §922(g), which simply includes the jurisdictional element

among the other elements of the crime with no textual indication that Congress meant for it to be treated differently.  
2

*Third*, a “knowing” violation could require knowledge of both the conduct and status elements of the offense (but not the jurisdictional element). This is the reading that petitioner advocates and that the majority adopts. Yet again, this interpretation is not based on the text of the provisions but on two other factors: the inference about congressional intent just discussed and the assumption that Congress, had it incorporated the term “knowingly” into §922(g), would have [\*34] placed it at the beginning of that provision. As I have explained, there is no textual basis for that assumption.

*Fourth*, a “knowing” violation could require knowledge of the conduct element—the possession of a firearm or ammunition—but not the others. Putting aside the question of the jurisdictional element, that is how one would naturally read §922(g) if Congress had incorporated the knowledge requirement into §922(g) *after* the status element and *just before* the conduct element. Of course, Congress did not do that—but neither did it place “knowingly” at the beginning of the list of elements.

As these competing alternatives show, the statutory text alone does not tell us with any degree of certainty the particular elements of §922(g) to which the term “knowingly” applies. And once it is recognized that the statutory text does not specify the *mens rea* applicable to §922(g)’s status element, there is no reason to assume that what Congress wanted was either a **very high mens rea** requirement (actual knowledge) or no *mens rea* at all. See *infra*, at 22. However, if we limit ourselves to those options, as the parties and the majority assume we must, the latter is more likely.

C

1

That is so for at least six reasons. *First*, in no prior [\*35] case have we inferred that Congress intended to impose a *mens rea* requirement on an element that concerns the defendant’s own status. Nor has petitioner pointed to any statute with text that plainly evinces such a congressional intent. Instead, in instances in which Congress has expressly incorporated a *mens rea* requirement into a provision with an element involving the defendant’s status, it has placed the *mens rea* requirement *after* the status element. For example, [18 U. S. C. §2251\(b\)](#) punishes any “person having custody or control of a minor who knowingly permits such minor to engage in . . . sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” To show a violation, the Government need not prove that the defendant knew that the person under his custody or control was a minor. Even where the issue of a defendant’s status is open and shut, Congress has taken pains to place the *mens rea* requirement so that it clearly does not apply to the status element. Thus, [18 U. S. C. §1924\(a\)](#) punishes an “officer, employee, contractor, or consultant of the United States [who] knowingly removes [classified] documents or materials without authority.” And [21 U. S. C. §861\(a\)](#) prohibits “any person at least eighteen years [\*36] of age [from] knowingly and intentionally . . . receiv[ing] a controlled substance from a person under 18 years of age.” So what the majority has done in this case is groundbreaking.

*Second*, there are sound reasons for treating §922(g)’s status element like its jurisdictional element. The parties agree that federal criminal statutes presumptively do not require proof that an accused knew that his conduct satisfied a jurisdictional element, and our cases support this proposition. See [Luna Torres, 578 U. S. , 136 S. Ct. 1619, 194 L. Ed. 2d 737](#); [United States v. Yermian, 468 U. S. 63, 104 S. Ct. 2936, 82 L. Ed. 2d 53 \(1984\)](#); [United States v. Feola, 420 U. S. 671, 95 S. Ct. 1255, 43 L. Ed. 2d 541 \(1975\)](#). We have never provided a comprehensive explanation of the basis for this presumption, but our decision in *Feola*, which concerned the offense of assaulting a federal officer in violation of 18 U. S. C. §111, is instructive. Agreeing with the interpretation

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<sup>2</sup> Indeed, the jurisdictional element is listed before the firearm element of the offense, to which everyone agrees the *mens rea* requirement applies. The text alone does not explain why the word “knowingly” would “leapfro[g]” over the middle element, which is perhaps why the majority does not adopt the novel “grammatical gravity” canon. [United States v. Games-Perez, 667 F. 3d 1136, 1143 \(CA10 2012\)](#) (Gorsuch, J., concurring); see also Tr. of Oral Arg. 32.



that had been adopted with “practical unanimity” by the courts of appeals, *Feola* held that an accused need not be shown to have been aware of his victim’s status. We inferred that this is what the statute means because requiring proof of knowledge would undermine the statute’s dual objectives of protecting federal officers and preventing the obstruction of law enforcement. [420 U. S., at 679, 95 S. Ct. 1255, 43 L. Ed. 2d 541.](#)

A similar consideration appears to provide the basis for the conclusion that a §922(g) defendant need not [\*37] know that his possession of a gun is “in or affecting commerce.” Whether or not conduct satisfies that requirement involves a complicated legal question; requiring proof of such knowledge would threaten to effectively exempt almost everyone but students of constitutional law from the statute’s reach; and that would obviously defeat the statute’s objectives.

The reason for the rule exempting knowledge of jurisdictional elements supports the conclusion that knowledge of §922(g)’s status element is also not required. Whether a defendant falls into one of the §922(g) categories often involves complicated legal issues, and demanding proof that a defendant understood those issues would seriously undermine the statute’s goals.

Take the category defined in §922(g)(4), which applies to a person who has been “adjudicated as a mental defective,” a term that is defined by regulation to mean

“(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

“(1) Is a danger to himself or to others; or

“(2) Lacks the mental capacity to contract or manage his own affairs.” [27 CFR §478.11\(a\) \(2019\).](#)

Congress thought [\*38] that persons who fall into this category lack the intellectual capacity to possess firearms safely. Is it likely that Congress wanted §922(g) to apply only to those individuals who nevertheless have the capacity to know that they fall within the complicated definition set out in the regulation? If a person has been found by a court to present a “danger . . . to others” due to mental illness or incompetency, should he escape the reach of §922(g) because he does not know that a court has so found?

Or consider the category defined by §922(g)(8), which applies to a person

“who is subject to a court order that—

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or [\*39] threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury . . . .”

Under this reticulated provision, does the majority’s interpretation require proof beyond a reasonable doubt that the defendant knew, when he possessed the gun or ammunition, (1) that his restraining order had been issued after a hearing, (2) that he had received actual notice of the hearing, (3) that he had been given an opportunity to participate at the hearing, (4) that the order covered harassing, stalking, or threatening, (5) that the person protected by the order qualified as his “intimate partner,” and (6) that the order explicitly prohibited the “use, attempted use, or threatened use of physical force”? Did Congress want a person who terrorized an intimate partner to escape conviction under §922(g) by convincing a jury that he was so blinded by alcohol, drugs, or sheer rage that he did not actually *know* some of these facts when he acquired a gun?

What about the category defined by §922(g)(9), which covers a person “who has been convicted in any court of a misdemeanor crime of domestic violence”? Did Congress want this provision to apply only to those abusers [\*40]

who actually know that an offense for which they were convicted falls within the complicated definition of a “crime of domestic violence”? The Members of this Court have been unable to agree on the meaning of that concept. Is it limited to offenses that have an element requiring proof that the abuser had a domestic relationship with the victim? In [\*United States v. Hayes\*, 555 U. S. 415, 129 S. Ct. 1079, 172 L. Ed. 2d 816 \(2009\)](#), the majority said no, but THE CHIEF JUSTICE and Justice Scalia disagreed. Can a conviction qualify if the offense required only recklessness? In [\*Voisine v. United States\*, 579 U. S. \\_\\_\\_\\_\\_, 136 S. Ct. 2272, 195 L. Ed. 2d 736 \(2016\)](#), the Court said yes, but JUSTICE THOMAS and JUSTICE SOTOMAYOR dissented. Does this provision apply if only slight force is required for conviction by the misdemeanor provision under which the defendant was convicted? Again, the Members of the Court have disagreed. Compare [\*United States v. Castleman\*, 572 U. S. 157, 162, 134 S. Ct. 1405, 188 L. Ed. 2d 426 \(2014\)](#) (opinion of the Court), with [\*id.\*, at 175, 134 S. Ct. 1405, 188 L. Ed. 2d 426](#) (opinion of Scalia, J.). If the Justices of this Court, after briefing, argument, and careful study, disagree about the meaning of a “crime of domestic violence,” would the majority nevertheless require the Government to prove at trial that the defendant himself actually knew that his abuse conviction qualified? Can this be what Congress had in mind when it added this category in 1996 to combat [\*41] domestic violence?

Serious problems will also result from requiring proof that an alien *actually knew*—not should have known or even strongly suspected but *actually knew*—that his continued presence in the country was illegal. Consider a variation on the facts of the present case. An alien admitted on a student visa does little if any work in his courses. When his grades are sent to him at the end of the spring semester, he deliberately declines to look at them. Over the summer, he receives correspondence from the college, but he refuses to open any of it. He has good reason to know that he has probably flunked out and that, as a result, his visa is no longer good. But he doesn’t *actually know* that he is not still a student. Does that take him outside §922(g)(8)? Is it likely that this is what Congress wanted?

That is most doubtful. Congress enacted §922(g)’s status-based restrictions because of its judgment that specific classes of people are “potentially irresponsible and dangerous” and therefore should be prohibited from owning or possessing firearms and ammunition. [\*Barrett v. United States\*, 423 U. S. 212, 218, 96 S. Ct. 498, 46 L. Ed. 2d 450 \(1976\)](#). It is highly unlikely that Congress wanted defendants to be able to escape liability under this provision by deliberately failing to [\*42] verify their status.

*Third*, while the majority’s interpretation would frustrate Congress’s public safety objectives in cases involving some of the §922(g) status categories, in prosecutions under the most frequently invoked category, possession by a convicted felon, the majority’s interpretation will produce perverse results. A felony conviction is almost always followed by imprisonment, parole or its equivalent, or at least a fine. Juries will rarely doubt that a defendant convicted of a felony has forgotten that experience, and therefore requiring the prosecution to prove that the defendant knew that he had a prior felony conviction will do little for defendants. But if the prosecution must prove such knowledge to the satisfaction of a jury, then under our decision in [\*Old Chief v. United States\*, 519 U. S. 172, 117 S. Ct. 644, 136 L. Ed. 2d 574 \(1997\)](#), it is questionable whether a defendant, by offering to stipulate that he has a prior conviction, can prevent the prosecution from offering evidence about the nature of that offense. And the admission of that information may work to a §922(g) defendant’s detriment.

*Old Chief* recognized that a party is generally entitled to admit evidence to prove a necessary fact even if the opposing party offers to stipulate to that fact, [\*id.\*, at 186-190, 117 S. Ct. 644, 136 L. Ed. 2d 574](#), but the [\*43] Court held that a §922(g) defendant’s offer to stipulate to the fact that he had a prior felony conviction precluded the prosecution from offering evidence about the identity of that offense. This holding appears to rest on the understanding that §922(g) requires proof of status but not of knowledge. See [\*id.\*, at 190, 117 S. Ct. 644, 136 L. Ed. 2d 574](#) (suggesting that a prosecutor would be entitled to seek admission of evidence of the nature of a prior felony if offered to prove knowledge). So if a defendant’s knowledge is now necessary, the logic of *Old Chief* is undermined.

*Fourth*, the majority’s interpretation of §922(g) would lead to an anomaly that Congress is unlikely to have intended. Another provision of §922—i.e., §922(d)(5)(A)—prohibits firearms sellers from selling to persons who fall within a §922(g) category, but this provision does not require proof that the seller had actual knowledge of the purchaser’s status. It is enough if the seller had “reasonable cause” to know that a purchaser fell into a prohibited category. A person who falls into one of the §922(g) categories is more likely to understand his own status than is a person who

sells this individual a gun. Accordingly, it is hard to see why an individual who may fall into one of the §922(g) categories should have less [\*44] obligation to verify his own situation than does the person who sells him a gun. Yet that is where the majority's interpretation leads.

*Fifth*, the legal landscape at the time of §922(g)'s enactment weighs strongly against the majority's reading. Long before Congress added the term "knowingly" to §924(a)(2), federal law prohibited certain categories of people from possessing firearms. See [Federal Firearms Act, 52 Stat. 1250](#); Act of Oct. 3, 1961, [Pub. L. 87-342, 75 Stat. 757](#); [Omnibus Crime Control and Safe Street Act of 1968, Pub. L. 90-351, 82 Stat. 197](#); [Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213](#), note following 18 U. S. C. §921. These predecessors of §922(g) did not expressly include any *mens rea* requirement, but courts generally interpreted them to require proof that a defendant acted knowingly in receiving, transporting, or possessing a firearm. The courts did not, however, require proof that a defendant knew that he fell within one of the covered categories or that his conduct satisfied the statutes' interstate-commerce requirement. See, e.g., [United States v. Santiesteban, 825 F. 2d 779, 782-783 \(CA4 1987\)](#); [United States v. Schmitt, 748 F. 2d 249, 252 \(CA5 1984\)](#); [United States v. Oliver, 683 F. 2d 224, 229 \(CA7 1982\)](#); [United States v. Lupino, 480 F. 2d 720, 723-724 \(CA8 1973\)](#); [United States v. Pruner, 606 F. 2d 871, 873-874 \(CA9 1979\)](#).<sup>3</sup>

During this same period, many States adopted similar laws,<sup>4</sup> and no State's courts interpreted such a law to require knowledge of the defendant's status. See, e.g., [People v. Nieto, 247 Cal. App. 2d 364, 368, 55 Cal. Rptr. 546, 549 \(1966\)](#); [People v. Tenorio, 197 Colo. 137, 144-145, 590 P. 2d 952, 957 \(1979\)](#); [State v. Harmon, 25 Ariz. App. 137, 139, 541 P. 2d 600, 602 \(1975\)](#); [State v. Heald, 382 A. 2d 290, 297 \(Me. 1978\)](#); [Williams v. State, 1977 OK CR 119, 565 P. 2d 46, 49 \(Okla. Crim. App. 1977\)](#).

All this case law formed part of the relevant backdrop of [\*45] which we assume Congress was aware when it enacted §924(a)(2)'s *mens rea* requirement in 1986. See *Firearms Owners' Protection Act*, 100 Stat. 449, note following 18 U. S. C. §921. "We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent." [Ryan v. Valencia Gonzales, 568 U. S. 57, 66, 133 S. Ct. 696, 184 L. Ed. 2d 528 \(2013\)](#) (internal quotation marks omitted). Where all the Federal Courts of Appeals and all the state courts of last resort to have interpreted statutes prohibiting certain classes of persons from possessing firearms agreed that knowledge of status was not required, it is fair to expect Congress to legislate more clearly than it has done here if it seeks to deviate from those holdings. Adding the *mens rea* provision in §924(a)(2) "clarified" that knowledge is the required *mens rea* with respect to a defendant's conduct, *ante*, at 10, but it did not indicate any disagreement with the established consensus that already applied that *mens rea* to §922(g)'s conduct element but not to the element of the defendant's status.<sup>5</sup>

Finally, the judgment of the courts of appeals should count for something. In *Feola*, the Court cited the "practical unanimity" of the courts of appeals, [420 U. S., at 676, 95 S. Ct. 1255, 43 L. Ed. 2d 541](#); see also [Luna Torres, 578 U. S., at , 136 S. Ct. 1619, 194 L. Ed. 2d 737 \(slip op., at 15-16\)](#), and here, even after Congress added the *mens rea* requirement, [\*46] all the courts of appeals to address the question have held that it does not apply to the

<sup>3</sup> The majority highlights a single case where the Sixth Circuit did require knowledge that the defendant was under indictment, out of a concern about secret indictments. *Ante*, at 10 (citing [United States v. Renner, 496 F. 2d 922, 924, 927 \(1974\)](#)). But Congress addressed this concern separately when it enacted the *mens rea* requirement. It moved the provision involving indictments to its own statutory subsection, §922(n), and punished only willful violations, see §924(a)(1)(D).

<sup>4</sup> See Brief for Everytown for Gun Safety as *Amicus Curiae* 6-8.

<sup>5</sup> Contrary to the majority's suggestion, *ante*, at 10, the addition of the *mens rea* requirement does serve a purpose under this interpretation: It codifies the holdings of the lower courts that knowledge is required for the conduct element. If Congress had left §922(g) off the list of offenses requiring knowledge in §924(a)(2), some may have invoked *expressio unius* to argue that a violation of §922(g) required no *mens rea* at all. Cf. A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012).



defendant's status.<sup>6</sup> In addition, the decisions of the highest courts of States with laws similar to §922(g) have continued to unanimously interpret those provisions in the same way.<sup>7</sup>

2

Petitioner contends that all the Courts of Appeals to address the question now before us have gone astray because they have not given proper weight to the presumption that a *mens rea* requirement applies to every element of an offense that results in the criminalization of otherwise innocent conduct. See [\*Elonis v. United States\*, 575 U. S. 135 S. Ct. 2001, 192 L. Ed. 2d 1, 24 \(2015\)](#); [\*United States v. X-Citement Video, Inc.\*, 513 U. S. 64, 115 S. Ct. 464, 130 L. Ed. 2d 372 \(1994\)](#); [\*Morissette v. United States\*, 342 U. S. 246, 72 S. Ct. 240, 96 L. Ed. 288 \(1952\)](#). This concern, which also animates much of the majority's analysis, is overstated.

The majority does not claim that the Constitution requires proof of *mens rea* for every status element or every element that has the effect of criminalizing what would otherwise be lawful conduct. Nor does it suggest that the presumption it invokes is irrebuttable for any other reason. That would be a radical conclusion because it has long been accepted that some status elements do not require knowledge. Laws that aim to protect minors, for example, often do not require proof that an offender had [\*47] actual knowledge of the age of a minor who is the victim of a crime. "The majority rule in the United States is that a defendant's knowledge of the age of a victim is not an essential element of statutory rape. . . . A defendant's good faith or reasonable belief that the victim is over the age of consent is simply no defense." [\*United States v. Gomez-Mendez\*, 486 F. 3d 599, 603, n. 7 \(CA9 2007\)](#) (citation omitted). Similarly, [\*18 U. S. C. §2243\(a\)\*](#) makes it a crime, punishable by up to 15 years' imprisonment, knowingly to engage in a sexual act with a person who is between the ages of 12 and 16 and is less than four years younger than the accused. This statute expressly provides that knowledge of the victim's age need not be proved. [\*§2241\(d\)\*](#). I do not understand the majority to suggest that these laws, which dispense with proof of knowledge for public safety purposes, are invalid.

Not only is there no blanket rule requiring proof of *mens rea* with respect to every element that distinguishes between lawful and unlawful conduct, but petitioner exaggerates in suggesting that the so-called jurisdictional elements in federal criminal statutes comply with this "rule" because they do no more than provide a hook for prosecuting a crime in federal court. These elements often do more than [\*48] that. They sometimes transform lawful conduct into criminal conduct: In a State that chooses to legalize marijuana, possession is wrongful only if the defendant is on federal property. Cf. [\*41 CFR §102-74.400 \(2018\)\*](#). Jurisdictional elements may also drastically increase the punishment for a wrongful act. For example, the statute at issue in *Feola*, which criminalizes assault on a federal officer, doubles the possible prison sentence that would have been applicable to simple assault. Compare [\*18 U. S. C. §111\*](#) and [\*§113\*](#). Just like a status element, a jurisdictional element can make the difference between some penalty and no penalty, or between significantly greater and lesser penalties.

Since a legislative body may enact a valid criminal statute with a strict-liability element, the dispositive question is whether it has done so or, in other words, whether the presumption that petitioner invokes is rebutted. This rebuttal can be done by the statutory text or other persuasive factors. See [\*Liparota v. United States\*, 471 U. S. 419, 425, 105 S. Ct. 2084, 85 L. Ed. 2d 434 \(1985\)](#) (applying presumption "[a]bsent indication of contrary purpose in the language or legislative history"); [\*X-Citement Video\*, 513 U. S., at 70-72, 115 S. Ct. 464, 130 L. Ed. 372](#) (discussing statutory context in reaching conclusion); [\*Flores-Figueroa\*, 556 U. S., at 652, 129 S. Ct. 1886, 173 L. Ed. 2d 853](#);

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<sup>6</sup> See [\*United States v. Smith\*, 940 F. 2d 710, 713 \(CA1 1991\)](#); [\*United States v. Huet\*, 665 F. 3d 588, 596 \(CA3 2012\)](#); [\*United States v. Langley\*, 62 F. 3d 602, 604-608 \(CA4 1995\)](#) (en banc); [\*United States v. Rose\*, 587 F. 3d 695, 705-706, and n. 9 \(CA5 2009\)](#) (per curiam); [\*United States v. Dancy\*, 861 F. 2d 77, 80-82 \(CA5 1988\)](#) (per curiam); [\*United States v. Lane\*, 267 F. 3d 715, 720 \(CA7 2001\)](#); [\*United States v. Thomas\*, 615 F. 3d 895, 899 \(CA8 2010\)](#); [\*United States v. Kind\*, 194 F. 3d 900, 907 \(CA8 1999\)](#); [\*United States v. Miller\*, 105 F. 3d 552, 555 \(CA9 1997\)](#); [\*United States v. Games-Perez\*, 667 F. 3d 1136, 1142 \(CA10 2012\)](#); [\*United States v. Capps\*, 77 F. 3d 350, 352-354 \(CA10 1996\)](#); [\*United States v. Jackson\*, 120 F. 3d 1226, 1229 \(CA11 1997\)](#) (per curiam); [\*United States v. Bryant\*, 523 F. 3d 349, 354, 381 U.S. App. D.C. 1 \(CADC 2008\)](#).

<sup>7</sup> See Brief for Everytown for Gun Safety as *Amicus Curiae* 11-19 (collecting cases).

*id.*, at 660, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (ALITO, J., concurring in part and concurring in judgment). And here, for the [\*49] reasons discussed above, §922(g) is best interpreted not to require proof that a defendant knew that he fell within one of the covered categories.

I add one last point about what can be inferred regarding Congress's intent. Once it becomes clear that statutory text alone does not answer the question that we face and we are left to infer Congress's intent based on other indicators, there is no reason why we must or should infer that Congress wanted the same *mens rea* to apply to all the elements of the §922(g) offense. As we said in *Staples v. United States*, 511 U. S. 600, 609, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994), "different elements of the same offense can require different mental states." And if Congress wanted to require proof of *some mens rea* with respect to the categories in §922(g), there is absolutely no reason to suppose that it wanted to impose one of the highest degrees of *mens rea*—actual knowledge. Why not require reason to know or recklessness or negligence? To this question, neither petitioner nor the majority has any answer.

D

Because the context resolves the interpretive question, neither the canon of constitutional avoidance nor the rule of lenity can be invoked to dictate the result that the majority reaches. As to the canon, we have never held that the *Due Process Clause* requires *mens rea* [\*50] for all elements of all offenses, and we have upheld the constitutionality of some strict-liability offenses in the past. See *United States v. Freed*, 401 U. S. 601, 91 S. Ct. 1112, 28 L. Ed. 2d 356 (1971); *United States v. Dotterweich*, 320 U. S. 277, 64 S. Ct. 134, 88 L. Ed. 48 (1943); *United States v. Balint*, 258 U. S. 250, 42 S. Ct. 301, 66 L. Ed. 604, T.D. 3375 (1922); *United States v. Behrman*, 258 U. S. 280, 42 S. Ct. 303, 66 L. Ed. 619, T.D. 3376 (1922). In any event, if the avoidance of a serious constitutional question required us to infer that some *mens rea* applies to §922(g)'s status element, that would hardly justify bypassing lower levels of *mens rea* and going all the way to actual knowledge.

As for the rule of lenity, we resort to it "only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what Congress intended." *Muscarello v. United States*, 524 U. S. 125, 138, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998) (alterations and internal quotation marks omitted). And what I have just said about the constitutional avoidance canon applies equally to lenity: It cannot possibly justify requiring actual knowledge.

III

Although the majority presents its decision as modest, its practical effects will be far reaching and cannot be ignored. Tens of thousands of prisoners are currently serving sentences for violating 18 U. S. C. §922(g).<sup>8</sup> It is true that many pleaded guilty, and for most direct review is over. Nevertheless, every one of those prisoners will be able to seek relief by one route or another. Those for whom direct review has not ended will likely be entitled to a new trial. [\*51] Others may move to have their convictions vacated under 28 U. S. C. §2255, and those within the statute of limitations will be entitled to relief if they can show that they are actually innocent of violating §922(g), which will be the case if they did not know that they fell into one of the categories of persons to whom the offense applies. *Bousley v. United States*, 523 U. S. 614, 618-619, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998). If a prisoner asserts that he lacked that knowledge and therefore was actually innocent, the district courts, in a great many cases, may be required to hold a hearing, order that the prisoner be brought to court from a distant place of confinement, and make a credibility determination as to the prisoner's subjective mental state at the time of the crime, which may have occurred years in the past. See *United States v. Garth*, 188 F. 3d 99, 109 (CA3 1999); *United States v. Jones*, 172 F. 3d 381, 384-385 (CA5 1999); *United States v. Hellbusch*, 147 F. 3d 782, 784 (CA8 1998); *United States v. Benboe*, 157 F. 3d 1181, 1184 (CA9 1998). This will create a substantial burden on lower courts, who are once again left to clean up the mess the Court leaves in its wake as it moves on to the next statute in need of "fixing." Cf. *Mathis v. United States*, 579 U. S. \_\_\_\_\_, \_\_\_\_\_, 136 S. Ct. 2243, 195 L. Ed. 2d 604, 626 (2016) (ALITO, J., dissenting).

<sup>8</sup> The U. S. Sentencing Commission reports that in fiscal year 2017 there were 6,032 offenders convicted under 18 U. S. C. §922(g), with an average sentence of 64 months, [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon\\_in\\_Possession\\_FY17.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_in_Possession_FY17.pdf) (as last visited June 19, 2019).

Nor is there any reason to think that the Court's reasoning here will necessarily be limited to §922(g). The Court goes out of its way to point out that it is not taking a position on the applicability of *mens rea* requirements in other status-based offenses, [\*52] even where the statute lists the status *before* the *mens rea*. [Ante, at 7](#).

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The majority today opens the gates to a flood of litigation that is sure to burden the lower courts with claims for relief in a host of cases where there is no basis for doubting the defendant's knowledge. The majority's interpretation of §922(g) is not required by the statutory text, and there is no reason to suppose that it represents what Congress intended.

I respectfully dissent.

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